

EX PARTE OR LATE FILED
HALPRIN, TEMPLE, GOODMAN & SUGRUE

1100 NEW YORK AVENUE, N.W., SUITE 650 EAST
WASHINGTON, D.C. 20005
(202) 371-9100 TELEFAX: (202) 371-1497
HTTP://WWW.HTGS.COM

~~COPY~~

DOCKET FILE COPY ORIGINAL

ALBERT HALPRIN
RILEY K. TEMPLE
STEPHEN L. GOODMAN
MELANIE HARATUNIAN
WILLIAM F. MAHER, JR.
THOMAS J. SUGRUE

JOEL BERNSTEIN
DAVID E. COLTON*
J. RANDALL COOK
JEFFREY L. MAGENAU**
*ADMITTED N.Y. & PA.
**ADMITTED MD.

May 21, 1997

Via Hand Delivery

Mr. Peter Cowhey
Chief, International Bureau
Federal Communications Commission
Room No. 858
2000 M Street, N.W.
Washington, D.C. 20554

RECEIVED
MAY 21 1997
Federal Communications Commission
Office of Secretary

Re: Ex Parte Submission in IB Docket No. 96-220

Dear Mr. Cowhey:

Orbital Communications Corporation ("ORBCOMM") briefly responds to the May 5, 1997 Letter from Robert Mazer ("May 5th Letter") concerning the alternative spectrum plans for the Non-Voice, Non-Geostationary Mobile Satellite Service ("NVNG MSS" or "Little LEO") that have proposed in this proceeding. As you are aware, six of the seven applicants have suggested a compromise plan that would allow the licensing of all of the current applicants, resulting in two new fungible large systems, two new smaller systems, and some accommodation of the requests of the current licensees. This compromise is referred to as the X/Y Plan.

The other proposal submitted by Leo One USA Corporation ("Leo One"), referred to as the A/B Plan, would accommodate a single new large system (and may be able to accommodate up to two additional smaller systems, although the details for such additional entry have not been specified). Several of the other applicants have already detailed the significant drawbacks of the A/B Plan, including the adverse impact on the GE Starsys system and/or severe limitations on a "large" system assigned to operate its service downlinks exclusively in the 137-138 MHz band.^{1/} ORBCOMM will not repeat those

^{1/} See e.g., Ex Parte Submission of GE Starsys, May 5, 1997; Ex Parte Submission of Final Analysis, April 21, 1997.

Mr. Peter Cowhey
May 21, 1997
Page 2

analyses here, particularly because those other applicants are best qualified to address the impacts on their proposed systems. ORBCOMM finds it necessary, however, to respond to some of the unfounded assertions regarding ORBCOMM that Leo One included in its May 5th Letter.

Leo One continues to misrepresent the record in this proceeding and state of the marketplace in asserting that ORBCOMM will be a monopoly supplier. As ORBCOMM demonstrated in its comments in this proceeding, it will face competition from a number of sources, including geostationary satellite systems, terrestrial systems, and domestic and foreign-licensed Big LEO systems.^{2/} This competition is in addition to the numerous Little LEO systems that have been authorized both within the United States and abroad that are in various stages of international coordination.

It is also ironic that Leo One is once again accusing ORBCOMM of being a monopolist, insofar as in its Comments in this proceeding, Leo One asserts that with respect to several markets (defined by the need for timeliness of transmissions), Leo One will be the only company capable of providing service.^{3/} Leo One, however, apparently contends that it will be a "benevolent monopolist," using its monopoly profits to fight off ORBCOMM's supposed strategic or predatory pricing.^{4/} Indeed, Leo One even claims that the public interest will be advanced by its holding such a monopoly. The Commission need not resolve this obvious inconsistency in Leo One's position with regard to monopolies, however, because ORBCOMM will offer services to time-sensitive markets and face competition from several sources, notwithstanding Leo One's erroneous assertions to the contrary. The Commission should not, however, adopt a licensing plan which has been designed to confer unique advantages on Leo One.

^{2/} See e.g., Comments of ORBCOMM submitted December 20, 1996 at pp. 22-27; Reply Comments of ORBCOMM submitted January 13, 1997 at pp. 12-15. Indeed, with respect to the Big LEO systems, AirTouch recently noted in its gateway application that the Globalstar system will support "wireless telephone and telecommunications services, including voice and data communications, as well as position location, short message and emergency services." AirTouch Gateway Earth Station Application, File No. 746-OSE-P/L-97 (Public Notice April 16, 1997) at FCC Form 493 Exhibit D. The latter three offerings are precisely same services that Little LEO systems will be offering, thus presumably targeting many of the same markets.

^{3/} See e.g., Leo One Comments filed December 20, 1996 at Boulton Appendix A p. 19.

^{4/} Id.

Mr. Peter Cowhey
May 21, 1997
Page 3

ORBCOMM is not supporting the X/Y Plan out of any desire to obtain a "preeminent competitive position."^{5/} Indeed, since filing the original Little LEO application in 1990, ORBCOMM has had to make numerous compromises and adjustments to its business plan to accommodate competition and sharing with the government users. In that same spirit, ORBCOMM is supporting the X/Y Plan as a compromise that will allow it to obtain access to a small amount of additional spectrum, and thereby enhance its coverage in the Northern Latitudes. The extra 12 satellites to be supported by the additional spectrum will also allow ORBCOMM to match the proposed 48 satellite constellation of Leo One, and provide enhanced coverage to the Northern Latitudes, including Alaska. In addition, by accommodating the reasonable requirements of all of the applicants, the X/Y Plan avoids the need to use auctions or other artificial means of eliminating mutual exclusivity. In fact, the X/Y plan enhances competition by allowing all of the applicants to enter the marketplace.

In contrast, the A/B Plan is intended by Leo One to preserve as sacrosanct its business plan, whereby Leo One alone will presumably have a 48 satellite constellation. Such a position stands in sharp contrast to ORBCOMM, which has had to make numerous compromises since 1990 because of reductions and limitations on its spectrum. The Commission should reject Leo One's attempt to tilt the competitive playing field in its favor by steadfastly refusing to even consider any changes or compromises. The Commission need not be bound by an applicant's desire to safeguard a particular business plan, but instead should reach a decision based on the public interest. ORBCOMM thus urges the Commission to reject Leo One's continued insistence on the A/B Plan.

Sincerely,


Stephen L. Goodman
Counsel for ORBCOMM

cc: William Caton
Ruth Milkman
Tom Tycz
Cecily Holiday
Fern Jarmulnek
Cassandra Thomas
Julie Garcia
Dan Connors
Parties of Record

^{5/} May 5th Letter at p. 5.